IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-814

CHRISTOPHER P. McCARTHY,

Petitioner,

v.

AMERICAN RED BALL TRANSIT CO., INC.

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

This case has been settled and is therefore moot. Petitioner so states at page 5 of his petition. Petitioner apparently contends his attorney was not authorized to terminate this case. Respondent assumes the law of New Hampshire is the same as that of all other states and that as a matter of law an attorney has inherent or apparent authority to settle. In any event, that is a matter of state law and any request for relief is properly addressed to the state courts in the first instance.

The facts establishing mootness are simple:

On July 30, 1974, the New Hampshire Supreme Court remanded the cause to the Hillsborough County Superior Court.

On September 13, 1974, pursuant to the remand, the Hillsborough County Superior Court entered judgment in favor of respondent in the amount of $3,646.48.

On October 22, 1974, petitioner satisfied the judgment by payment to respondent, and respondent executed a release of any further claims. At the same time petitioner and respondent filed a notice with the Hillsborough County Superior Court of the satisfaction of the judgment. That pleading, which was signed by counsel for both parties, reads as follows in its entirety:

> "The parties agree as follows: Judgment for the plaintiff. Judgment satisfied. No further action for the same cause."

On October 23, 1974, the trial court made the following entry of satisfaction of judgment:

> "Judgment for plaintiff, no further action by agreement filed. Judgment satisfied."

If the petitioner wishes to challenge the settlement or the judgment entered by the county trial court, his remedy lies in proceedings within the New Hampshire state judicial system. No direct review by this court is proper. The writ should be denied.

Respectfully submitted,

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